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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Francis Grandinetti, ) CV 01-1090-PHX-MHM (SLV)  
Plaintiff, )  
vs. ) **ORDER**  
Warden Frank Luna, et al., )  
Defendant. )

Currently, before the Court is Plaintiff's Motion to Re-Transfer Custody of Plaintiff back to the District of Arizona Due to Malicious Venue, Retaliation and Injuries at Mississippi (Dkt.#32) and Motion to renew *in forma pauperis* status and Rule 60(b) relief of dismissals at Docket Numbers 27 and 28. (Dkt.#34). In reviewing the pleadings, the Court issues the following Order.

## **I. Procedural History**

Plaintiff's initial complaint, based upon 42 U.S.C. § 1983, was dismissed pursuant to the "three strikes provision" of 28 U.S.C. § 1915(g) on August 3, 2001. (Dkt.#2). Plaintiff filed a Motion for reconsideration which the Court denied on October 24, 2001. (Dkt.#9). Plaintiff then filed a Motion regarding transfer from Arizona (Dkt.#10) which was denied on March 29, 2002. (Dkt.#14). Plaintiff then filed a Notice of Appeal on March 26, 2002 which was dismissed for lack of jurisdiction on June 13, 2002. (Dkt.#19).

1       On July 6, 2004, Plaintiff filed another Motion for reconsideration based upon  
2 continuing retaliation. (Dkt.#23). On August 17, 2004, Plaintiff filed a Motion for an Order  
3 based upon reconsideration issues ("Motion for Order"). (Dkt. #25). Again, on August 27,  
4 2004, Plaintiff filed an Amended Motion for Order based upon similar allegations in his  
5 original Motion for Order. (Dkt.#26). The Court summarily denied these latter motions.  
6 (Dkt.#28). Specifically, the Court noted that because judgment had already been entered in  
7 this case, the only relief available to Plaintiff was through the procedural devices of: (1) a  
8 motion to alter or amend judgment pursuant to Rule 59(e), Federal Rules of Civil Procedure;  
9 or (2) a motion for relief from judgment pursuant to Rule 60(b). The Court noted the only  
10 potentially applicable bases for the Court to consider Plaintiff's Motions was under Rule  
11 60(b) but rejected any such argument on the grounds that they were untimely if brought  
12 pursuant to: (1) mistake, surprise or excusable neglect; (2) newly discovered evidence; or (3)  
13 fraud under Rule 60(b). The Court also explained that even if timely, Plaintiff's motion  
14 provided no basis for the Court to intervene. Rather, the Court stated that the proper course  
15 of action since Plaintiff's Complaint had already been dismissed would be to file a new action  
16 pursuant to 42 U.S.C. § 1983 using a Court-approved form. (Dkt.#28).

17 **II. Analysis**

18       Rather than file a separate action as the Court has recommended, Plaintiff continues  
19 to challenge the Court's previous rulings dismissing this action before this Court.  
20 Specifically, again Plaintiff seeks this Court to intervene with respect to his Motion to Re-  
21 transfer custody back to Arizona. (Dkt#32). Moreover, Plaintiff renews his request for *in*  
22 *forma pauperis* status as well as again apparently seeks reconsideration under Rule 60(b)  
23 without offering any additional argument in support of doing so.

24       As stated in its previous order, this Court is without jurisdiction to entertain Plaintiff's  
25 requests absent a proper Rule 60(b) motion that is based upon a void judgment; a satisfied  
26 or discharged judgment or extraordinary circumstances which would justify relief. See  
27 School District No. 1J, Multnomah County v. AcandS, 5 F.3d 1255, 1263 (9<sup>th</sup> Cir. 1993),  
28 *cert. denied*, 512 U.S. 1236, 114 S.Ct. 2472 (1994), (citations omitted). Here, the Plaintiff

1 has asserted no such reasons. Obviously, a request for this Court to transfer Plaintiff back  
2 to Arizona and a motion regarding a renewed request for *in forma pauperis* status do not rise  
3 to the requisite level under Rule 60(b) for the Court to consider.

4 || Accordingly,

5           **IT IS HEREBY ORDERED** that Plaintiff's Motion to Re-transfer custody back to  
6 the District Court of Arizona is denied. (Dkt.#32).

7           **IT IS FURTHER ORDERED** that Plaintiff's Motion to renew his *in forma pauperis*  
8 request and Rule 60(b) relief is denied. (Dkt.#34).

9 DATED this 1st day of March, 2006.

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Mary H. Murgula  
United States District Judge